IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : August 10, 2006

Criminal Appeal No. 797-DB of 2003

Het Ram ....Appellant

versus

State of Haryana
....Respondent

Criminal Revision No. 350 of 2004

Hari Parkash ....Petitioner

versus

Het Ram and another ....Respondents

Coram: Hon'ble Mr. Justice Virender Singh
Hon'ble Mr. Justice A.N. Jindal

Present : **In Criminal Appeal 797-DB of 2003**

Mrs. Anju Arora, Advocate for the appellant
Mr. Sunil Katyal, DAG Haryana

In Criminal Revision No. 350 of 2004

Mr. P.N.Makani, Advocate for the petitioner/complainant
Mrs. Anju Arora, Advocate for respondent no. 1
Mr. Sunil Katyal, DAG Haryana for respondent no. 2

Virender Singh, J.

Vide this judgment we are disposing of aforesaid Criminal Appeal and Criminal Revision as both are arising out of one and the same judgment dated 11/12.9.2003 of learned Sessions Judge, Sirsa.

It is pertinent to mention here that the aforesaid revision was ordered to be heard along with Criminal Appeal No. 797-DB of 2003 vide order dated 27.4.2004. Record reveals that there is delay of 43 days in filing the revision and Criminal Miscellaneous No. 6212 of 2004 was filed along with the main revision petition. However, the said application was not decided. Since the main revision petition already stands admitted, we hereby condone the aforesaid delay in filing the main revision petition. Resultantly Criminal Miscellaneous No. 6212 of 2004 is hereby allowed.

Appellant Het Ram stands convicted under section 302 IPC and was sentenced to undergo imprisonment for life and to pay a fine of Rs 15,000/-, in default to further undergo RI for two years. Along with him, his son namely Banwari alias Subhash, Ramji Lal son of Kumbha Ram and Sultan son of Ramji Lal were also booked. All the accused were charged under section 120-B IPC and under sections 302/34 IPC whereas the appellant was charged substantively for section 302 IPC. All the three aforesaid co-accused stand acquitted by the trial court. The admitted

position is that State of Haryana has not preferred any appeal against their acquittal.

The first informant is Hari Parkash (PW2). He is son of Kanshi Ram (since deceased). In his statement Ex. PD which is the basis of registration of formal FIR Ex. PD/1, he alleges that his father Kanshi Ram had remained Sarpanch of village Dhingtania for about 25 years and commanded respect in the village. Many persons including the appellant had encroached upon the Panchayat land and constructed houses thereon. Smt. Saroj one lady Sarpanch was elected with their support. Panchayat had got removed encroachment from the Panchayat as per the policy of the Government and got demolished certain un-authorised houses including the house of appellant and many other persons. However, the appellant againt got it re-constructed on the same land belonging to the Panchayat which was again got demolished 3/4 days prior to the occurrence. His father Kanshi Ram had actively participated in the removal of un-authorised possession. Kanshi Ram was member of a Gram Vikas Samiti. On account of demolition of the houses, many persons of the village including the appellant were nursing grudge against his father. A few days prior to the occurrence, the appellant after consuming liquor had gone to the house gate of the deceased 2/3 times in his Jeep bearing Registration No. MP-05-6589 and threatened him with dire consequences. He also abused him. It is

then alleged that previously also when the house of appellant was demolished for the first time he accompanied by 4/5 persons in the Jeep had hurled abuses and passed certain threats to his father in the chowk (crossing). On account of the threats, his father started moving with Om Parkash his brother (PW3). It is then the case of the complainant that Kansi Ram used to go to the fields for morning walk daily which falls towards village Chauburja. On the fateful day i.e. 4.12.2001, he, his father and uncle Om Parkash left the house at about 6.30 AM for going to the field and when they reached in front of tubewell of Sahab Ram son of Ram Kishan, the appellant while driving his jeep reached there from behind. On seeing the Jeep, the complainant and his uncle Om Parkash proceeded towards one side of the road (north of the road) and Kanshi Ram abandoned the road and proceeded towards other side (southern side). Four/five persons were also sitting in the Jeep but he could not identify them properly being at some distance. The appellant turned the Jeep towards his father and struck it against him due to which his father first bounced on the bonnet of the Jeep and then fell on the ground. He received multiple injuries and became unconscious at the spot. The complainant and his uncle at once reached near the jeep but the appellant accelerated its speed and ran away from the spot towards village Chauburja. It is then alleged that 4/5 persons who were sitting in the jeep were exhorting appellant saying “Het Ram, run

over Kanshi Ram under the jeep. He should not go escaped today". He then arranged a conveyance and brought Kanshi Ram to Civil Hospital, Sirsa. Thereafter he proceeded towards the Police Station but at Sagwan Chowk, SI Sher Singh PW14 who then was SHO of Police Station Sadar Sirsa and other police officials met him and recorded his statement Ex. PD, on the basis of which formal FIR Ex. PD/1 was recorded in the Police Station under sections 307, 114 and 120-B IPC. On the same day, Kanshi Ram expired in the hospital at 1.15 PM. On receipt of ruqa/information Ex. PO to the that effect section 302 IPC was added. A special report was then sent to the concerned Magistrate through Constable Ram Prashad PW10 which was received by the Ilaqa Magistrate at 8.30 PM.

It is pertinent to mention here that earlier to it when Kanshi Ram was admitted in hospital, a ruqa Ex. PJ was sent by Dr. Dale Singh PW12 to the SHO, Police Station Sadar Sirsa on receipt of which, ASI Dharam Singh PW16 reached General Hospital and moved an application Ex. PN seeking the opinion of the doctor regarding the fitness of injured Kanshi Ram to make statement. The doctor gave his opinion Ex. PN/1 to the effect that he was not fit to make statement. Kanshi Ram was referred to PGIMS Rohtak by the doctor but he was brought back to Sirsa as dead.

After the registration of the case SI Sher Singh PW14 inspected the place of occurrence on the same day and prepared rough site plan Ex.

PN. Photographs of the place of occurrence were also clicked by PW Kuldeep Kumar PW7. During the investigation the Investigating Officer was informed that Kanshi Ram who was referred to PGIMS Rohtak has been brought dead to Civil Hospital, Sirsa. He reached there and prepared inquest report Ex. PC. On the request of the police, Dr. Raj Kumar PW1 conducted the post mortem on the dead body of Kanshi Ram on 5.12.2001 at Civil Hospital, Sirsa. SI Sher Singh also recorded the statement of PW4 Rai Singh, PW5 Bhagat Ram and PW6 Munshi Ram. As per their statements, the involvement of Banwari alias Subhash, Ramji Lal and Sultan in the murder was mentioned. Het Ram was arrested on 6.12.2006. Munshi Ram before whom the aforesaid three persons had made extra judicial confession produced them before SI Sher Singh on 12.12.2001.

After completion of the investigation final report under section 173 of the Code of Criminal Procedure was filed against the present appellant and his three aforesaid co-accused. They were charged for the offence as stated in the opening para of the judgment. The appellant, as stated above, stands convicted. Hence, this appeal.

The prosecution has examined as many as 17 witnesses in support of its case but we do not feel the necessity of reproducing the evidence with regard to the involvement of the co-accused of the appellant as after their acquittal State of Haryana has not preferred any appeal.

The medical evidence is as under:

PW12 Dr. Dale Singh had medico legally examined Kanshi Ram on 4.12.2001 at 7.55 AM. He was brought by his brother Bhagirath. He was unconscious and his pulse was not recordable. Both pupils were dilated and reacting to light. The aforesaid doctor noticed the following injuries on his person:-

1. There was a bruise with swelling on left side forehead, involving left eye, of size 2 cms x 2 cms red in colour. X-ray was advised. Surgeon's and eye surgeon opinions were sought.
2. Diffuse swelling on right side chest. X-ray was advised.
3. Bruise of 4 cms x 4 cms with diffuse swelling on right fore-arm with loss of function, disfiguration of fore-arm coarse crepts on movement of part, fracture both bone. It was of red colour. Injury was grievous in nature. X-ray was advised.
4. Diffuse swelling on left flank. Surgeon's opinion and ultra sonography were advised.
5. There was bruise of 8 cms x 6 cms with diffuse swelling on right left at knee joint, lower part. It was of red colour. X-ray was advised.
6. There was abrasion on left knee 2 cms x 2 cms. It was of red colour. X-ray was advised.
7. There was a red coloured abrated bruise of 4 cms x

2 cms on left leg medial side at middle. X-ray was advised.

As per the opinion of the doctor, the injuries could be received by him on 4.12.2001 at 6.30 AM, if he was struck by a running jeep. This doctor in cross-examination has, however, stated that the injuries found on the person of Kanshi Ram could be possible by multiple falls on a hard surface.

PW15 Dr. Joginder Singh is another Medical Officer of General Hospital, Sirsa. He, on an application of the police Ex. PN gave his opinion Ex. PN/1 declaring Kanshi Ram to be unfit to make statemeant at 9.40 AM. On the same day, Kanshi Ram died at about 1.15 PM and thereafter he sent ruqa to the concerned Police Station . Dr. Raj Kumar PW1 who had conducted the autopsy on the dead body of Kanshi Ram had also noticed seven injuries on the person of the deceased (already depicted in the MLR). According to his opinion, the cause of death was due to shock and haemorrhage as a result of multiple injuries, which were ante mortem in nature and sufficient to cause death in ordinary course of nature.

The eye version account is as under:-

Hari Parkash PW2 son of the deceased is the first informant. In his substantive statement he reiterates his earlier version.

Om Parkash PW3 is real brother of the deceased. He also

corroborates the first informant.

Investigation

The investigation of this case is conducted by SI Sher Singh which is detailed in the preceding paras and, therefore, we do not feel the necessity of reproducing the same.

We at the same time do not feel the necessity of reproducing the other evidence as the same is not that material.

We have heard Ms. Anju Arora, learned counsel for the appellant and Mr. Sunil Katyal, DAG Haryana.

Ms. Arora contends that the case of the prosecution deserves to be rejected in totality on the ground that it is disbelieved qua his co-accused who were allegedly shown to have actively participated in the commission of offence and the State has not preferred any appeal against their acquittal. Dwelling upon her arguments, she contends that the very case set up by the prosecution is that when Kanshi Ram was allegedly hit by the appellant with his jeep, 4/5 persons were also sitting in the said jeep and had exhorted Het Ram to do away with Kanshi Ram. The prosecution agency during investigation also recorded statement of Rai Singh, Bhagat Ram PW4 and PW5 with regard to the involvement of the aforesaid three persons but the learned trial court has doubted their involvement in the commission of offence. This not only reflects upon the manner of conducting of entire

investigation in this case but it also weaken the very case qua the present appellant.

Learned counsel then submits that in fact Kanshi Ram had many enemies in the village as is clear from the initial statement Ex. PD of his son Hari Parkash and even in his substantive statement and that some-one might have hit him. The appellant has been involved for certain ulterior motive. The present case can also be of hit and run when Kanshi Ram was away to his fields in the morning hours and his son Hari Parkash and brother Om Parkash) have been imported subsequently in order to give it a shape of eye version account.

Learned counsel in order to demolish the eye version account submits that the eye witness account runs contrary to the medical evidence and injuries sustained by Kanshi Ram are not synchronising with the manner depicted by Hari Parkash in his substantive statement and this goes to show that some one had hit him when he was all alone. The learned counsel then submits that another fact which creates doubt about the presence of the aforesaid two witnesses is that when Kanshi Ram reached the hospital, he was accompanied by his other brother Bhagirath as is stated by Dr. Dale Singh PW12 and this fact further strengthens the plea of the appellant to the effect that the accident was not witnessed by any one. According to the learned counsel, the accident allegedly took place at 6.30

AM. The injured reached the hospital within one hour and still the report was lodged with the police at 12.15 PM. This shows that a considerable time was consumed by the complainant party to come out with a version of their choice as the complainant side was inimical towards the appellant, may be on account of previous altercation. She further submits that the complainant side was an influential party in the village and on account of un-due influence exerted on the police machinery the present appellant and his three co-accused including his son Banwari (since acquitted) were involved in this case.

On the basis of the aforesaid submissions, Ms. Arora prays for acquittal of the appellant.

Learned State counsel while repudiating the submissions advanced by Ms. Arora contends that there is no delay at all in lodging the FIR and therefore, the appellant cannot derive any benefit out of it. He then submits that so far as acquittal of three co-accused of the appellant are concerned that is primarily on different set of evidence and the appellant cannot make capital out of that. The present case is hinging upon two eye witnesses who have supported the case in totality. May be that they are from the family of the deceased but their presence was most natural at the time of occurrence and there appears to be no reason to disbelieve them. The appellant, thus, has no escape from his liability.

After hearing the learned counsel for both the sides and perusing the entire record minutely, we are of the view than the prosecution has been able to prove the charge against the appellant beyond any shadow of doubt. We shall now refer to the arguments advanced by Ms. Arora.

Acquittal of three co-accused of the appellant has no bearing upon the case of present appellant. The case set up by the prosecution is that when Het Ram was driving his jeep No. MP-05-6589, along with him 4/5 persons were sitting who had exhorted Het Ram to hit Kanshi Ram so that he does not go alive. Hari Parkash, however, could not identify them. In our view if Hari Parkash had to involve any body from his village along with the appellant for certain ulterior motive, he could name them very comfortably in his initial statement. It is only during the investigation that Sher Singh recorded statement of Bhagat Ram and Rai Singh. Rai Singh (PW4) has stated in his substantive statement that on 4.12.2001 at about 6.30 AM, he had gone towards the house of Het Ram in search of he-buffalo and saw jeep no. MP-05-6589 lying parked in front of the house of Het Ram. Het Ram was seated on the driver seat whereas other three accused (since acquitted) were pushing the jeep. The said jeep then went towards village Chauburja. The statement of Bhagat Ram is to the effect that he had over heard Het Ram and his three co-accused planning to eliminate Kanshi Ram on 3.12.2001. At that time the jeep was lying parked outside the house

of Ramji Lal. The statement of Munish Ram is to the effect that three accused had made extra judicial confession before him.

We have gone through the impugned judgment. According to us the trial court has rightly disbelieved the aforesaid evidence while acquitting the three co-accused but it certainly does not demolish the case of the prosecution qua Het Ram appellant. Therefore, in our considered view, the appellant is not going to get any benefit from the acquittal of his aforesaid three accused.

The present case has to be tested on the evidence of Hari Parkash, the first informant and the son of the deceased and Om Parkash the other eye witness, who is the brother of the deceased.

May be that certain other persons of village were also nursing grudge against Kanshi Ram as it has come in the evidence, but that fact by itself cannot be said to be a ground to give clean chit to the appellant. Hari Parkash has categorically stated that earlier also when the house of Het Ram was demolished he had an altercation with his father. Now for the second time when his house was demolished, he along with certain persons had come to their house under the influence of liquor and had abused them and also threatened them of dire consequences. This is the reason that Kanshi Ram had made it a point to keep some one with him and most of the time his brother Om Parkash used to remain with him. How one reacts to a

particular situation depends upon the psyche of an individual. The appellant had threatened Kanshi Ram a few days prior to occurrence. He nursed his anguish and the other villages might not have taken it that seriously. Het Ram is the resident of the same village and it was in his knowledge that Kanshi Ram used to to his fields early in the morning and he chose a particular day within 3/4 days of the prior incident and hit him with his jeep. We do not find anything un-usual in it which can be considered in favour of the appellant and the argument advanced in this regard is repelled. It is well settled that merely the witnesses are from the family of the deceased, that cannot be a ground to discard their statements out-rightly. At the most their evidence is to be examined with care and caution. We have re-scanned their statements very minutely applying the same test and find no infirmity on any aspect. Dr. Dale Singh who had initially examined Kanshi Ram has stated that he was brought by his brother Bhagirath. It has further come in the evidence that Bhagirath is younger brother of the deceased. In order to appreciate the argument of Ms. Arora we have minutely seen the substantive statement of Hari Parkash wherein he stated that after Kanshi Ram was hit by the appellant, he became unconscious, they arranged for a vehicle and removed him to the hospital. The occurrence is of 6.30 AM and the injured was examined by Dr. Dale Singh at 7.55 AM. It has come in the cross-examination of Hari Parkash

that the place of occurrence is at a distance of one kilometer from the house. Another fact that has come in the cross-examination is that one scooterist had reached the place of occurrence followed by many villagers. It has also come in the evidence that the scooterist who was an un-known person brought him to the village, he arranged a jeep and then removed his father to the hospital. Another fact appearing in his statement is that he reached the spot at 7.30 AM after arranging for the jeep which belonged to his uncle Om Parkash. It has also come in his statement that his uncle Om Parkash and Bhagirath remained in the hospital for one hour. Whatever is put in the cross-examination to the main witness is the answer to the argument advanced by Ms. Arora. In our considered view, Hari Parkash who happened to be with his father did not waste any time. He immediately came to the village, arranged for jeep of his uncle and went to the spot. Bhagirath is real brother of Kanshi Ram and Hari Parkash when came to village must have informed him about the occurrence and he too had accompanied him to the place of occurrence first of all and thereafter to the hospital. This is the reason that the presence of Bhagirath is shown in the MLR and doctor had verified that fact. The presence of only one person accompanying the injured is generally shown in the MLR. The doctor in routine had shown the presence of Bhagirath the real brother who was also accompanying the injured. This fact does not lead us to draw an inference

that Hari Parkash and Om Parkash were not present with the injured or they had not seen the occurrence.

We at the same time do not find any delay in lodging the FIR. No doubt when SI Sher Singh reached the hospital, no person was found present near the injured as is clear from the police proceedings but in the explanation tendered by Hari Parkash in his cross-examination he states that they were asked to arrange for money because doctor intended to refer Kanshi Ram to PGIMS Rohtak for further treatment. He has also made it clear that no police official came to hospital and they did not inform the police telephonically as they were more worried about saving their father. SI Sher Singh PW14 Investigating Officer has made it clear that when he was returning from the hospital and reached at Sangwan Chowk, Sirsa, Hari Parkash met him and made his statement. All these facts when taken collectively go to show that Hari Parkash and Om Parkash are the eye witnesses to the occurrence and they have come forward with a true picture. No doubt some minor discrepancies are there in their statements but, in our considered view, the same do not shatter the basic fabric of the prosecution case. Therefore, the contention of learned counsel with regard to delay part also looses its force.

The discrepancies as pointed out with regard to the ocular version vis-a-vis medical evidence are also noticed by us and we do not

find any infirmity in the same when re-appreciated in the light of the substantive statement of Hari Parkash. Even otherwise, the eye witnesses are not supposed to give photographic version of each and every type of injury. The eye witnesses had moved to one side after they saw appellant coming and Kanshi Ram (since deceased) had gone to the other side. This all had happened within a few minutes. Whatever witnesses could notice from a distance they have depicted in simple manner and there is no evidence to disbelieve them.

No other point has been urged before us by either side.

As a sequel to the aforesaid discussion, we hold that the prosecution has been successful in proving its case beyond any shadow of reasonable doubt qua Het Ram appellant and as such his conviction and sentence as recorded by the trial court for the charge of section 302 IPC is hereby reaffirmed.

We have heard Mr. Makani, learned counsel for the petitioner in Criminal Revision No. 350 of 2004 in which the petitioner is seeking enhancement of sentence from life imprisonment to death sentence. Another grouse shown by the petitioner is that the fine imposed on Het Ram appellant is also on lower side.

The admitted position is that State of Haryana has not preferred any statutory appeal for enhancement of sentence of Het Ram appellant.

Even otherwise, we do not consider the present case to be one in which the extreme penalty (death sentence) should be imposed. Consequently, the said prayer is declined.

We do not intend to increase the amount of fine also. However, keeping in view the totality of facts and circumstances of the case, the ends of justice would be adequately met if the fine already imposed by the trial court (Rs 15,000/-) is converted into compensation under section 357(3) of the Code of Criminal Procedure, to be paid to the legal heirs of the deceased. Ordered accordingly.

The net result is that Criminal Appeal No. 797-DB of 2003, **Het Ram vs State of Haryana** is hereby dismissed. Criminal Revision No. 350 of 2004, **Hari Parkash vs Het Ram and another**, also stands disposed of in the aforesaid terms.

(Virender Singh)
Judge

(A.N. Jindal)
Judge

August 10, 2006
'dalbir'